

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4445 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

J G KUNDALIA

Versus

MAMLATDAR RAJKOT TALUKA AND OTHERS

Appearance:

MR DU SHAH for Petitioners
MR IM PANDYA ASTT GOVT PLEADER for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/09/2000

ORAL JUDGEMENT

#. Heard Mr.D. U. Shah, learned advocate appearing on behalf of the petitioner and Mr.I.M.Pandya, learned AGP appearing on behalf of the respondent authorities.

#. In the present petition, RULE has been issued on

19th June, 1990 and interim relief in terms of para 13(B) has been granted by this Court on 23rd July, 1990. The brief facts of the present case are as under.

The land bearing Survey No. 24/2 admeasuring 20 gunthas and Survey No. 24/3 admeasuring 19 gunthas situated at Raiya was the holding of the occupant Koli Narsi Popat under the Saurashtra Land Reforms Act. The entry No. 1167 dated 16-2-1967 was made in village record of right and was verified by the Deputy Mamlatdar, Rajkot on 21st March, 1967. The aforesaid land along with some other land was sold by registered sale deed by Koli Narsi Popat to the petitioners for Rs.6500/- and entry No.1170 was made on 16th February, 1967 in the village form No. 6. This entry was verified by the Deputy Mamlatdar, Rajkot on 21st March, 1967. A show cause notice was issued under the Land Revenue Rule 108(6) on 30-9-1986 to the petitioners as to why the revenue entry Nos. 1167 and 1170 should not be revised. The Deputy Collector, Rajkot passed order on 30th November, 1986 in Case No. 30/86 quashing and setting aside both the entries and subsequent sale transactions. The Mamlatdar at Rajkot was given direction to take order dated 25th February, 1964 into consideration and to make necessary entries after legal inquiry. Against the said order, the petitioners preferred Land Revenue Rules Revision No.20 of 1987 before the Collector at Rajkot. The Collector, Rajkot vide his order dated 9th July, 1987 dismissed the Land Revision No. 20/87. Thereafter, on 22nd July, 1987 the petitioners preferred Revision Application and the said revision was also dismissed by the Additional Chief Secretary by his order dated 29th December, 1989 which order received by the petitioner on 5th February, 1990. It is this order against which the present petition has been filed by the petitioner.

#. Mr.D.U. Shah, learned advocate for the petitioner has raised important question that the respondent authorities have committed error in exercising of jurisdiction in reopening the revenue entries of 1367 after lapse of more than 19 years in 1987 in contravention of the clear judgment of Supreme Court reported in Raghav Natha's case in 10 G.L.R. page 992. Mr. Shah has submitted that one contention is sufficient set aside the orders passed by the lower authorities and therefore, he is not pressing any other submission in respect of the merits of the matter. Though he has made clear that in the present case entry has been cancelled and therefore, question is relating to cancellation of entry and no question of title. He has also submitted that power has been exercised by the authority under the

Land Revenue Rules under Rule 108(6) then how the authority can examine the question of title. Therefore, the authority has committed gross error in examining the title of the petitioners when inquiry was limited to the examination of question of entry made in the revenue record. Mr.I. M. Pandya, learned AGP appearing on behalf of the respondent has submitted that on the date of transaction, the petitioner was not owner and having occupation of the land in question and therefore, he cannot give better title to other persons under the provisions of Transfer of Properties Act. He also submitted that transaction itself is bad and void and therefore question of delay in such cases cannot be considered and such decision cannot be applied when the transaction itself is void.

#. Mr.Shah, learned advocate for the petitioner has submitted that before the lower authorities, the question of unreasonable delay for initiating the proceeding under Rule 108(6) has been raised by the petitioner but the said question has not been properly examined by the lower authorities. The lower authorities have distinguished the decision of this Court as well as Apex Court in respect of the unreasonable delay on the ground that all the decisions are relating to the proceedings under Section 211 of the Bombay Land Revenue Code and not relating to the proceedings recording the entry in the revenue record. Therefore, the lower authority has considered such unreasonable delay will not affect the proceedings initiated by the authority under Rule 108(6) and same can be rectified without considering the question of unreasonable delay. The lower authorities also considered that whenever such defects is brought to the notice of the higher authorities, the same shall have to be considered, even in such event, question of delay cannot come into way for initiating the proceedings by the revenue authorities. It is further submitted that if the Government land if it is sold to somebody, it cannot become property of the private persons.

#. Mr.D.U.Shah, learned advocate appearing on behalf of the petitioner has relied upon the decision of this Court in case of JANARDAN D. PATEL vs. STATE OF GUJARAT reported in 1997 (1) GLR page 50 and submitted that under Section 211 of the Gujarat Land Revenue Rules 1972 and Rule 108, the powers of revision under Rule 108 is subject to some limitation as powers of revision under Section 211. The powers must be exercised within a reasonable time as laid down in RAGHVANATHA CASE (SUPRA) (1969) 1 GLR 992 Supreme Court. The Officer exercising the powers under Land Revenue Code cannot usurp the

powers under another enactment. The procedure pointed out as to what should be done in such cases. It is also further observed by this Court that it cannot be gainsaid that the revision powers under the relevant provisions contained in Rule 108(6) of the rules are quite similar to those contained in Section 211 of the Code. What applies to Section 211 of the Code would apply with equal force to Rule 108(6) of the Rules. It is further observed that the revenue authorities have no jurisdiction to decide whether or not a transaction is in contravention of any statutory provisions contained in any other enactment and authority having limited jurisdiction cannot obviously expand its jurisdiction nor assume jurisdiction not conferred on it by law. Therefore, while exercising the powers under Rule 108(6), the authority has no powers to decide the validity of the transaction on the touch stone of the statutory provisions occurring in some other enactment. If any such question arise, the matter should be referred to the authority empowered to deal with under the said other enactments. It may be noted that the revenue authorities with respect to the mutation proceedings in the revenue records popularly known as RTS proceedings are invested with limited powers regarding the maintenance of revenue record for fiscal purposes and making mutation entries therein on certain contingency. Its bare perusal clearly goes to show that what is to be inquired is the correctness of the entry in the record of rights and the Registrar of mutation in accordance with law and rules framed in that regard. Thus, it becomes clear that the revenue authority exercising the powers with respect to the RTS proceedings are invested with the limited powers. They cannot themselves assume certain powers not conferred on them by law. The appellate authority having limited jurisdiction cannot obviously expand its jurisdiction nor can assume jurisdiction not conferred on it by law. In that view of the matter, it has no power to decide the validity of the transaction on the touch stone of the statutory provisions framed in some other enactments. Similar view has been taken by this Court in case of EVER GREEN APARTMENT CO-OPERATIVE HOUSING SOCIETY LTD. VS SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT reported in 1991 (1) GLR 113. It has also been considered by this Court in a case reported in 1997 (1) GLR page 50.

#. Relying upon said decision of this Court, Mr. Shah submitted that notice has been issued by the revenue authorities under Rule 108(6) and therefore, the validity of the transaction cannot be examined while initiating the proceedings under Rule 108(6). Therefore

Mr.Shah submitted that the sale transaction which has been cancelled by the authority is beyond the jurisdiction. Mr.Shah further submitted that the said proceedings under Rule 108(6) has been initiated by the authorities after period of 19 years.

#. I have heard the learned advocates appearing on behalf of the respective parties. In the present case, the petitioner has been able to succeed in respect of the contention of the unreasonable delay on the part of the respondent authorities for initiating the proceedings under Rule 108 (6) of the Bombay Land Revenue Code and therefore, I am not going into merits of another aspects of the matter and this Court is examining the question of unreasonable delay which has been raised by the learned advocate Mr.Shah. Mr.Shah has also relied upon the decision of this Court as well as Apex Court in support of his contention.

#. Following authorities have been cited by Mr.Shah, learned advocate for the petitioner in support of his contention.

In case of EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD VS. SPECIAL SECRETARY, REVENUE DEPARTMENT, GOVT OF GUJARAT reported in 1991 (1) GLR 113. In case of PARSHOTTAM RAMAJI RATHOD VS. D.D. MISTRY reported in 1999 (2) GLH 310 and so also in case of SHREE RAVIDARSHAN COOPERATIVE HOUSING SOCIETY VS. P.THAKKER reported in 2000 (2) GLR 1639 and in case of MOHAMAD KAVI MOHAMAD AMIN VS. FATMABAI IBRAHIM reported in (1997) 6 SCC Supreme Court Cases page 71. In case of KESHAVLAL A. MANTAR VS. DY. COLLECTOR in Special Civil Application No. 2323/89 decided on 16th June, 2000 so also in case of GANAPAT M. SHIKARI VS. STATE OF GUJARAT delivered in Special Civil Application No. 1778 of 1987 [coram : D.M.Dharmadhikari, CJ.] on 3rd March, 2000.

#. I have considered the various authorities cited by the learned advocate Mr.Shah. Observations of the Apex Court in case of MANCHHARAM VS. SP PATHAK AND OTHERS in Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983, it has been observed that;

"Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by precedent. However, one is readily available in State of Gujarat vs. Patel Raghav Natha and

others (1970) 1 SCR 335."

##. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities under Section 84-C under suo motu inquiry by Mamatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo moto power under Section 84-C, not exercised within reasonable time.

##. In all the decisions which have been cited by the learned advocate Mr. Shah of this Court as well as of Apex Court, the question of exercise of powers by the authorities within reasonable period or not has been examined in light of the facts that when no period of limitation has been specified under the statutory provisions. In case of MOHAMAD KAVI MOHAMAD AMIN Vs. FATMABAI IBRAHIM (1997) 6 SCC 71, even more than 1 year delay has been considered by the Apex Court unreasonable while exercising the suo motu powers under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 and therefore, considering this decision of the Apex Court and the facts of the present case, wherein at least more than 19 years period have been passed for initiating the proceedings under Rule 108(6) of the Bombay Land Revenue Rules because transaction of sale deed and necessary entries were made pursuant to the sale deed on 16th February, 1967 and 21st March, 1967, and the said entry has been recorded in village form record of rights and was verified by the Deputy Mamatdar, Rajkot. Thereafter on 30th September, 1986, a show cause notice was issued to the petitioner under the provisions of Rule 108(6) of the Land Revenue Rules, as to why the revenue record entry 1167 and 1170 should not be revived, therefore, there is delay of more than 19 years for initiating the proceedings under Rule 108 (6). In such situation, it must be presumed that meanwhile the land in question remained with the petitioners because of the interim stay which has been granted by this Court protecting the rights of the petitioner in respect of possession. Meanwhile, the possession has remained with the petitioner and considering this aspect as well as it is also necessary to mention that petition has been filed in the year 1990 and has remained unchallenged so far as the averments made in the petition are concerned. Therefore, considering the decision of the Apex Court as well as of this Court as referred to above, I hold that the action under the Act was taken by the respondent authorities after undue and unreasonable delay of more than 19 years.

##. Therefore, the petitioner succeeds in the present petition on the aspect of unreasonable delay on the part of the respondent authorities for undertaking the proceedings under the Bombay Land Revenue Rules. Since the petitioner has succeeded in the present petition only on the ground of unreasonable delay and hence, this court does not examine the other contentions raised in this petition and the same are not dealt with separately. In the result, the petition succeeds and is allowed accordingly. The impugned orders dated 30th November, 1986, 9th July, 1987 and 29th December, 1989 - Annexures - A, C and E respectively are hereby quashed and set aside and rule is made absolute to the aforesaid extent. In the facts and circumstances, the parties are left to bear their own costs.

Date : /9/2000 [H.K.Rathod, J.]

#kailash#